IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **Crl.A.No.72-DB of 1998**

DATE OF DECISION: November 26, 2007

BHUPINDER SINGH @ BHINDI ...APPELLANT

VERSUS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

PRESENT: MR. HARSH AGGARWAL, ADVOCATE FOR THE APPELLANT.
MR. V.K. JINDAL, ADDL.A.G., PUNJAB.

ASHUTOSH MOHUNTA, J.

The appellant Bhupinder Singh @ Bhindi has filed this appeal against the judgement and order of sentence passed by Addl. Sessions Judge, Faridkot dated 22.1.1998, vide which he has been convicted under Section 302 and sentenced to undergo imprisonment for life and to pay a fine of Rs.4000/- and in default of payment of fine he has further been ordered to undergo R.I. for 6 months. The appellant has also been convicted under Section 450 IPC and sentenced to undergo R.I. for 5 years and to a pay a fine of Rs.1000/- and in default of payment of fine he has been ordered to undergo R.I. for 3 months.

The case against the appellant was registered on the statement Ex.PD of Balbir Kaur PW2. As per her statement, she was a resident of Lahorian Mohalla situated at Moga. She used to reside in her house alongwith her husband Karnail Singh, her son Nishan Singh aged 26 years

and her adopted daughter Amarjit Kaur, aged 18 years. There is a hand pump installed outside the gate of her house from where the women folk belonging to the family of the accused Bhupinder Singh used to come to take water and also to wash their clothes. This was the source of continuous bickering amongst the complainant's family and the accused's family.

On 1.4.1994, at about 3.30 p.m. Kirna wife of Kala Singh and Sunita wife of Tar Singh, accompanied with by the accused Bhupinder Singh came to the hand pump for washing their clothes. The daughter of the complainant Amarjit Kaur told them that as she was to take a bath, therefore, they should take their clothes back to their houses. This offended Sunita, Kirna as well as the accused who went back to their house by showing their resentment and by speaking in a grumbling tone. Thereafter, the complainant sat in front of their house in street alongwith one Dharam Singh who is her son-in-law in relation who had come from Kurukshetra. Amarjit Kaur had gone to the bathroom which was not having any door and was covered with cloth for having a bath. At 3.45 p.m. the complainant and Dharam Singh heard shrieks of Amarjit Kaur from inside the bathroom. The complainant and Dharam Singh went towards the bathroom and saw that Bhupinder Singh had scaled over the wall and was holding a knife (chhuri) in his right hand and had caught the hair of Amarjit Kaur from his left hand and was giving her knife blows on her stomach, breast, legs, arms and buttocks. In the meantime, Karnail Singh, husband of the complainant also reached the house and he and Dharam Singh picked up a Tabbal and proceeded towards the accused Bhupinder Singh accused, who ran away with his knife. Amarjit Kaur was picked up and was placed on a cot. She died immediately thereafter.

Thereafter, the complainant alongwith Dharam Singh left her house to lodge the report with the Police. Karnail Singh was asked to guard the dead body of Amarjit Kaur. On the way Ajmer Singh, SI/SHO of Police Station Division No.2, Moga met the complainant and recorded the statement which was endorsed as Ex.PD/1. On the basis of the statement made by Balbir Kaur, formal FIR EX.PD/2 was recorded.

The dead body of Amarjit Kaur was taken to Civil Hospital, Moga where Dr. Mukesh Gupta, PW1 conducted the post mortem. The Doctor found the following injuries:-

"*1. 2x1cm incised wound in the middle of right breasts, entering into the chest cavity.*

2. 2x1cm incised would on the outside of right side of chest 8 cm below the axilla, entering into chest cavity.

3. 2x1cm incised wound on the left side of chest muscle deep 7 cm above the nipple.

4. 2x1cm incised wound on the upper part of left side of chest 5cm below the shoulder. Wound was muscle deep.

5. 2x1cm incised wound on the right side of abdomen 3 cm above and away from the umbilicus, entering into abdominal cavity.

6. 2cm/1cm incised would to the left side of abdomen, 4 cm above and away from umbilicus entering into the abdominal cavity.

7. 4cm x 1 cm incised would muscle deep on the middle and back of left upper arm.

8. 2½x2½ cms incised would on the front of left lower arm

muscle deep 5 cm above the wrist.

9. *5x1cm incised would on the front and medial side of left leg, muscle deep and 5cm below the knee joint.*
10. *2x2½ cm muscle deep incised wound on the front of right leg. 10 cm below the knee joint.*
11. *2x1 cm incised would muscle deep on the back of right thigh in its middle.*
12. *2x1cm incised wound muscle deep on the back of right thigh 8 cm above the knee joint.*
13. *6x1 cms incised wound skin deep on the outer side of left thigh 3cm above the knee joint."*

According to the Doctor all the injuries were ante mortem in nature and the death was due to shock and hammeorage which was sufficient to cause death in the ordinary course of nature.

The accused who had run away from the place of occurrence was arrested on 5.4.1994, by ASI Ajmer Singh. He was interrogated and during investigation he made a disclosure statement Ex.PJ and got recovered the knife Ex.P4. The knife was put in a sealed parcel and taken in possession vide memo Ex.PL. ASI Ajmer Singh got prepared the scaled site plan on 10.4.1994, from Gursewak Singh, Draftsman and recorded the statements of the witnesses. On completion of investigation challan against the appellant was presented in the Court and the accused was charge-sheeted under Section 302/450 IPC to which he pleaded not guilty.

The prosecution in order to prove its case examined PW-1 Dr. Mukesh Gupta, complainant PW2 Balbir Kaur who was witness to the

occurrence, PW3 Dharam Singh, who was also witness to the occurrence and other officials, namely, PW4 ASI Paramjit Singh, PW5 Constable Baljinder Singh and PW6 ASI Ajmer Singh, who was the Investigating Officer of the case. The prosecution also tendered into evidence affidavits of MHC Sukhjinder Singh Ex.PX and Constable Pargat Singh Ex.PY and the report of Forensic Science Laboratory, Ex.PP.

The accused in his statement under Section 313 Cr.P.C. stated that he was innocent. It was further deposed by him that he had illicit relations with Amarjit Kaur and she has been killed by her parents, Balbir Kaur, complainant and Karnail Singh. In his defence he examined DW1 Mehal Singh and DW2 Dr. Harinder Singh.

The trial Court rejected the defence version of the accused and placed reliance on the ocular testimony of PW2 Balbir Kaur and PW3 Dharam Singh. It was held by the trial Court that there is no reason to disbelieve the consistent testimony of PW2 Balbir Kaur, complainant and PW3 Dharam Singh regarding the manner Amarjit Kaur was murdered by the accused Bhupinder Singh. The ocular version was also corroborated by the medical evidence. On the basis of the above, the accused Bhupinder Singh was convicted under Section 302, 450 IPC and was sentenced to undergo imprisonment as stated in the opening paragraph.

Mr. Harsh Aggarwal, counsel for the appellant has contended that the accused was handicapped as his left lower limb was affected with Polio (Polymyelitis) and the percentage of disability was 70%. He has placed reliance on the statement of DW-2 Dr. Harinder Singh, Registrar, Department of Orthopaedic, G.G.S. Medical College, Faridkot in this regard. It is contended that the accused who is suffering from Polio could

not possibly have scaled over the boundary wall of the house of Karnail Singh which was 8-9 feet high hence, the prosecution version is absolutely false.

This argument of the learned counsel is without any merit because Balbir Kaur PW2 in her statement has stated that the accused entered their house after scaling over the wall which is 4 feet high and thereafter stabbed the deceased Amarjit Kaur numerous times with a knife. The appellant could easily scale over the 4 feet high wall as he was not handicapped from his hands. Moreover, the accused in his statement under Section 313 Cr.P.C. has stated that he was having illicit relations with the deceased. It shows that the accused was physically fit. Thus, this argument of the counsel for the appellant is without any merit and the same is rejected.

It was next contended by the counsel for the appellant that the complainant Balbir Kaur PW2, Dharam Singh PW3 are stated to be in the house when the accused is said to have caused 13 injuries on the person of the deceased. It is submitted that neither the complainant nor Dharam Singh intervened which itself shows that they were not present at the time of the occurrence.

This argument is again without any basis. The appellant was armed with a knife and therefore, it is not easy for the persons who are unarmed to catch hold of an armed person. As per the statement of PW2 and PW3 an attempt was made by Dharam Singh and Karnail Singh to catch hold of the accused but he fled away.

Learned counsel has further argued that motive in this case is very weak as the appellant would not have attacked Amarjit Kaur merely on the ground of her refusal to allow the women folk of the accused's family to

wash their clothes.

This argument is also without any force as Sunita and Kirna were prevented from washing their clothes by Amarjit Kaur as she wanted to take a bath. At that time the accused was accompanying Sunita and Kirna and they had also shown their resentment. The refusal of the deceased Amarjit Kaur to allow Kirna and Sunita from washing their clothes at the hand pump which was situated outside the house infuriated the appellant as a result of which he caused fatal injuries to the deceased. Apart from the above, Balbir Kaur has given a detailed and graphic account of the manner in which the occurrence took place. It has been stated by her that the accused got enraged when Amarjit Kaur told Sunita and Kirna that she was to take a bath and they should go back to their house. The accused came back within 15 minutes with a knife and inflicted as many as 13 knife blows on the various parts of the body of Amarjit Kaur. The incident was not only witnessed by her but also by Dharam Singh who had come from Kurukshetra to visit the complainant who is related to him. Dharam Singh PW3 has also given a detailed account of the manner in which Amarjit Kaur was killed. He has stated that accused had caught hold of Amarjit Kaur by her hair with his left hand and inflicted knife blows with his right hand causing many injuries. It is further stated that he and Balbir Kaur advanced towards the accused to save Amarjit Kaur but the accused Bhupinder Singh also tried to attack them and thereafter they retreated. The testimonies of both these witnesses have not been shaken in any manner. They have given a consistent and detailed account of the manner in which the appellant inflicted the knife blows on Amarjit Kaur as a result of which she died instantaneously. The ocular testimony of PW2 and PW3 is duly

corroborated by the medical evidence of PW1 Dr. Mukesh Gupta who found as many as 13 incised wounds on the person of the Amarjit Kaur. All the injuries were sufficient to cause death in the ordinary course of nature.

Apart from the above, there is no false implication in the present case. The complainant Balbir Kaur PW2, Dharam Singh PW3 have only named the appellant. The names of Kirna and Sunita could also have been easily introduced by PW2 Balbir Kaur but that is not the case. Moreover, the incident is alleged to have taken place on 1.4.1994 at about 3.45 p.m. and the FIR was registered at Police Station City Moga at 5.55. p.m. and the special report reached the Magistrate at 8.35 p.m. This shows that there was no delay regarding the First Information Report and there is no chance of accused being implicated falsely.

As far as the version of the accused is concerned, he has pleaded that he was having illicit relations with the deceased but the appellant has led no evidence to show that he had any relationship with the deceased or that the same was being objected to by her adopted parents. In the presence of the same the version of the accused has to be rejected.

In view of the aforementioned discussion, we are of the considered opinion that PW2 Balbir Kaur, complainant and PW3 Dharam Singh have given a consistent account of the manner in which Amarjit Kaur was killed by the appellant. Their testimony has not been shaken in any manner. The accused had entered the house of Karnail Sngh for committing murder of Amarjit Kaur.

We find no merit in the appeal and the same is dismissed. The conviction and sentence of the appellant under Section 302 and 450 IPC is upheld.

The appellant is on bail. His bail bonds are cancelled. The appellant be taken into custody forthwith to undergo the remaining part of his sentence.

(ASHUTOSH MOHUNTA)
JUDGE

November 26, 2007
Gulati

(MOHINDER PAL)
JUDGE